

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

UNITED STATES )  
                    )  
                    )  
v.                 )  
                    )  
                    )  
                    )  
Noel Hernandez, )  
                    )  
                    )  
Defendant.        )  
                    )

**DEFENDANT HERNANDEZ'S SUPPLEMENTAL MEMORANDUM  
IN SUPPORT OF DEFENDANT'S EMERGENCY MOTION TO PRODUCE  
FRANCISCO NAVARRO'S PSYCHIATRIC RECORDS, TO CONTINUE TRIAL  
AND RENEWED MOTION TO SUPPRESS IN-COURT  
AND OUT-OF-COURT IDENTIFICATIONS**

NOW COMES the Defendant, Noel Hernandez, ("Hernandez"), through counsel, and respectfully supplements his Emergency Motion to Produce Francisco Navarro's Psychiatric Records, to Continue Trial and Renewed Motion to Suppress In-Court and Out-of-Court Identifications, which was filed with this Court on June 29, 2005. In support thereof Counsel states the following:

1. On July 1, 2005, the Government filed a letter with the Court, updating defense counsel on Francisco Navarro's current psychiatric status, changes in his testimony, memory deficiencies and the Commitment Order.
  2. Apparently, Navarro has told the Government that, "he sometimes does not remember anything, and that sometimes that his fellow inmates ask him about his family and he says he does not know anything about them."

3. Based upon this assertion alone, this Court is respectfully urged to reconsider its denial of the Defendant's Motion to Suppress In-Court and Out-of-Court Identifications and to order the suppression of same.

4. By the same letter, the Government reports that Navarro is waiting to see a neurologist for his memory deficiencies.

5. Therefore this Court is respectfully urged to continue the trial date until a neurological assessment of Navarro's memory deficiencies is available for defense counsel to use at trial if the Court deems it relevant pursuant to *United States v. Butt*, 955 F.2d 77, 82-83 (1<sup>st</sup> Cir. 1992).

6. Navarro also indicated to the Government the Commitment Order was executed on him and he was taken to a psychiatric hospital in Bayamon, Puerto Rico, called the Mercy Center of Bayamon, in February of 2004.

7. To date, the undersigned counsel's investigator has been unable to find any such hospital in Bayamon.

8. Once again, it is unlikely that any medical facility in Puerto Rico will honor a subpoena from the undersigned counsel without a release from Navarro.

9. Even if the records are produced, it is unlikely that they will be translated and available for trial on July 11, 2005.

WHEREFORE this Honorable Court is respectfully urged to suppress the in-court and out-of-court identification of Francisco Navarro and continue the trial date until Mr. Navarro's psychiatric records are available and have been translated from Spanish into English.

Respectfully submitted,



Peter Charles Horstmann, Esquire  
BBO #556377  
PARTRIDGE, ANKNER & HORSTMANN, LLP  
200 Berkeley Street  
Boston, Massachusetts 02116  
(617) 859-9999

Attorney for Defendant  
Noel Hernandez

#### CERTIFICATE OF SERVICE

I, Peter Charles Horstmann, Esquire, hereby certify that on this 5<sup>th</sup> day of July, 2005, a copy of the foregoing DEFENDANT HERNANDEZ'S SUPPLEMENTAL MEMORANDUM IN SUPPORT OF DEFENDANT'S EMERGENCY MOTION TO PRODUCE FRANCISCO NAVARRO'S PSYCHIATRIC RECORDS, TO CONTINUE TRIAL AND RENEWED MOTION TO SUPPRESS IN-COURT AND OUT-OF-COURT IDENTIFICATIONS was served electronically upon Nancy Rue, Assistant United States Attorney, United States Attorneys Office, One Courthouse Way, Suite 9200, Boston, MA 02210 and David G. Tobin, Assistant United States Attorney, United States Attorneys Office, One Courthouse Way, Suite 9200, Boston, MA 02210.



Peter Charles Horstmann, Esquire